

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1057 of 1996

to

CIVIL REVISION APPLICATION No 1063 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT HOUSING BOARD THROUGH HOUSING COMMISSIONER
Versus
ZULFIKAR RAMJANALI MERCHANT'S KULMUKHTRAY KHALIDBIN SAIYED

Appearance:

MRS KETTY A MEHTA for Petitioners
MR HD VASAVADA for Respondent No. 1
SERVED BY AFFIX.(N) for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

ORAL JUDGEMENT

A common issue arises for decision in all these seven Revision Applications, hence they are being disposed of by this common judgment. The common issue is whether the Civil Court has jurisdiction to entertain and try the suit under the provisions of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the "Act") for injunction restraining the petitioner-original defendants from taking over the possession of the houses allotted to the respondents.

2. The respondents filed Regular Civil Suit Nos. 147 of 1994 to 153 of 1994 in the Court of the Civil Judge (J.D.), Bhavnagar for a permanent injunction restraining the petitioners from dispossessing the respondents of the houses allotted to them alongwith an application for interim injunction. The trial court held that the Civil Court has no jurisdiction to entertain the suit and the suit alongwith the application for interim injunction was dismissed. The plaintiffs filed appeals before District Court. During the pendency of the appeal, the respondents-plaintiffs filed an application exh. 5 for a temporary injunction. The petitioners also filed the application exh.14 whereby the petitioners claimed that the houses were allotted to the respondents under hire purchase scheme by the Gujarat Housing Board and an order has been passed against the respondents-plaintiffs under The Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act) and the respondents are required to comply with the orders passed by the appropriate authority. Under section 16 of the said Act, the Civil Court has no jurisdiction to try the suit and therefore, the injunction application be dismissed.

3. The trial court came to the conclusion that the Civil Court has no jurisdiction to entertain and/or try the suit and the suit as well as the application of the respondents were liable to be dismissed. Hence, the 1st Joint Civil Judge (J.D.), Bhavnagar by his judgment and order dated 29th February, 1996 allowed the application exh.14 of the petitioners-defendants holding that the Civil Court had no jurisdiction to try and/or entertain the suit as also application for injunction. Therefore, the suit and the

application were dismissed.

The respondents therefore, filed Regular Civil Appeal Nos. 31 of 1996 to 37 of 1996 before the District Court. During the pendency of those appeals, the respondents-plaintiffs moved an application exh.5 for interim injunction. The Assistant Judge, Bhavnagar by his order dated 16th April, 1996 has restrained the petitioners-original defendants from dispossessing the plaintiffs from the premises allotted to them till the final disposal of the said appeals.

4. Being aggrieved by the said order of the learned Assistant Judge, Bhavnagar, the petitioners-original defendants have filed these Civil Revision Applications in this Court.

5. Heard the learned counsel for the parties and perused the relevant record.

6. The learned counsel for the petitioners submitted that the lower appellate court has committed an error of law in holding that the issue as to whether the Civil Court has jurisdiction to entertain the civil suits has to be determined alongwith the issues framed by the trial court at the relevant time. He has only considered that before taking the final decision, if stay is not granted, there is a likelihood of the respondents-plaintiffs being evicted forcibly from the suit premises. It has also been observed that it would not be proper to take a final decision regarding legality of the impugned order on the point of jurisdiction. The applications moved in the appeal were allowed and the interim injunction was granted by the appellate court.

7. The learned counsel for the petitioners submitted that the order was passed by the appropriate authority under sections 5 and 7 of the Act and the order of eviction has already been passed by the appropriate authority. Instead of going before the authority concerned to contest the impugned order of the proceedings, the respondents filed Civil Suits for a permanent injunction and those suits cannot be entertained by the Civil Court under section 16 of the Act as the proceedings of the suit are barred by sections 9 and 16 of the Act. She also relied on the decision of this Court in the case of Jadeja Shivubha Dolubha vs. Gujarat State Road Transport Corporation Ltd., Ahmedabad reported in 1977 GLR, 656 and the decision in the case of Gujarat State Road Transport Corporation Ltd. vs. Vimlaben Shah reported in 1996(1) GLH, 72.

8. I have carefully considered the contentions of the learned counsel for the parties. Section 16 of the At provides as under:

"No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person on the ground that he is in unauthorised occupation of any public premises or for any other reason specified in sub-section (1) of section 4, or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of thast section or the costs awarded to the Stte Government or the Corporate authority under sub-section (5) of section 9 or any portion of such rent, damage or costs."

9. It was also pointed out by the learned counsel for the petitioners that section 9 of the Act provides for an appeal before the District Court against the order of eviction passed under the said Act within a specified period. As such, the suit proceedings are barred by the statutory provisions of section 16 of the Act and an alternative remedy of appeal is available under section 9 of the Act. The trial court is therefore, justified in passing the order that the suit proceedings are not entertainaabale in the Civil Court. Hence, the order directing the suit proceedings as well as the application for interim injunction application were dismissed as not entertainable. Unless the proceedings of the suit are entertainable, the lower appellate court was not justified in granting the injunction and has thus, committed an error in holding that the issue regarding jurisdiction will be decided at an appropriate stage by the court concerned. According to her, at the relevant time, only convenience of the parties has been considered. If the suit proceedings were not entetainable, the lower appellate court was not justified at all in granting the interim injunction. This Court in the case of Jadeja Shivubha (Supra) has held as under:

"In view of this settled legal position that the word "entertain" would not mean "to receive and determine" but it would mean "adjudicate upon" or "proceed to consider on merits". If that is the

real meaning of word "entertain", it cannot be gainsaid that the Legislature under section 16 clearly intended that Civil Courts shall have no jurisdiction to adjudicate upon or proceed to consider on merits in any suit or proceeding in respect of eviction of any person on specified grounds from public premises. In other words, the Legislature, by adopting the word "entertain" clearly intended to oust the jurisdiction of Civil Court. In that view of the matter therefore, I do not think that the decision of the Bombay High Court can be of any assistance to the cause of the opponent Corporation".

This view has been accepted subsequently by this Court in the case of GSRTC vs. Vimlaben (Supra) in which it has been held that the suit instituted by the respondent-plaintiff being Regular Civil Suit No. 469 of 1984 in the Court of Civil Judge (J.D.) was totally without jurisdiction and the Civil Court totally lacked jurisdiction in entertaining the suit.

10. The learned counsel for the respondents conceded that the respondents-plaintiffs have bonafidely adopted a wrong forum by filing civil suits instead of contesting the proceedings initiated under the Act before the authority concerned. He also submitted that the proceedings for evictions of the respondents were taken against them and ex parte orders were passed as the respondents have not appeared before the appropriate authority and they ought to have appeared before appropriate authority, and if any adverse order is passed, then they should have filed an appeal before the District Court within prescribed time limit. But they have bonafide adopted a wrong forum under Civil Procedure Code. It is also provided in section 9 of the Civil Procedure Code that the Courts shall have jurisdiction to try all suits of civil nature except suits of which their cognizance is either expressly or impliedly barred. In the present case, undoubtedly, Civil Court has no jurisdiction even under section 9 of Civil Procedure Code or section 16 of the Act.

11. Hence, in view of the above well legal settled position of law, these Revision Applications deserve to be allowed and are accordingly allowed. The common order dated 16th April, 1996 below application exh.5 in Regular Civil Appeal Nos. 31 of 1996 to 37 of 1996 passed by the Assistant Judge, Bhavnagar is hereby quashed and set aside. However, the respondents are at

liberty to move an appropriate authority under the aforesaid Act for adopting legal forum taking the benefit of the provisions of section 14 of the Limitation Act. However, if so advised, they may get the benefit of section 9 of the Act. If the respondents move such an application before appropriate authority or appellate authority under the provisions of the Act, the authority concerned will decide the same in accordance with law after giving a reasonable opportunity of hearing to the parties concerned. Rule is made absolute to the aforesaid extent with no order as to costs.

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